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N.J. BOARD OF DENTISTRY
ON 5-10-99 cm

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
OAL DOCKET NO. BDS 02242-98S

IN THE MATTER OF THE SUSPENSION)	
OR REVOCATION OF THE LICENSE OF:)	Administrative Action
ROBERT WINEGARDEN, D.M.D.)	
License No. DI9721)	ORDER
TO PRACTICE DENTISTRY IN THE)	
STATE OF NEW JERSEY)	

Following a lengthy hearing on this matter in the Office of Administrative Law, Administrative Law Judge Jeff S. Masin issued his Initial Decision dated February 1, 1999. On March 3, 1999, the New Jersey State Board of Dentistry ("Board") reviewed the initial decision and the evidence, adopted all of Judge Masin's findings of fact and most of his conclusions of law, and issued a Final Decision and Order which was filed on March 29, 1999. In its Final Decision and Order, the Board, using its experience and expertise, determined that the conduct of Robert Winegarden, D.M.D. ("respondent") warranted a longer period of suspension than suggested by Judge Masin. Therefore, the Board granted respondent additional time to present evidence in mitigation of the suspension.

The Board received a letter from respondent's attorney, Christopher Struben, Esq. Counsel argues that the increased period of suspension is not warranted because the prescribing of controlled dangerous substances to the four patients at issue was due to inadvertence and not for respondent's personal financial gain. Moreover, respondent asserts that his marital problems and

divorce were the cause of respondent's actions which resulted in his criminal conviction. In further mitigation, counsel argues that if the two-year active suspension were imposed, respondent would be subject to financial hardship and that closure of his practice would affect more than 1,000 patients. Respondent has not provided any certifications, affidavits, or other documents in support of his counsel's assertions.

In response, the Board received a letter from Paul R. Kenny, Deputy Attorney General. DAG Kenny argues that the additional information contained in respondent's submission should not change the Board's decision. First, the information could have been presented in mitigation before Judge Masin, at which time the Attorney General would have had the opportunity for cross-examination. Second, respondent has not submitted any documents to support his claim of financial hardship; respondent remains able to earn a living in some other manner during the two-year period of active suspension. In addition, DAG Kenny reminds the Board that it has the authority to use its expertise to modify or reject a recommendation of an initial decision-maker.

The Board finds that the financial hardship argued by respondent, even if supported by documentary evidence, is and would be insufficient to mitigate the penalty imposed by the Board for respondent's proven acts of gross negligence and misconduct. The Board therefore affirms the period of suspension (five years, with two years of active suspension) set forth in its Final Decision and Order.

The Board also received a letter from respondent's counsel, Christopher Struben, Esq., requesting a stay of the suspension pending appeal, or in the alternative, for a period of thirty days to provide time to file an emergent appeal. The Board treats this letter as a motion for a stay. The Board has received a letter from Paul R. Kenny, Deputy Attorney General, opposing the stay but not opposing a brief period of time for respondent to wind down his practice.

The Board having considered all of the materials presented, having found that respondent has failed to present any evidence that would mitigate the penalty imposed, and for all the reasons set forth in the Final Decision and Order,

IT IS ON THIS /0 DAY OF MAY, 1999,


ORDERED:

1. The Final Decision and Order of the Board entered March 29, 1999 is hereby reaffirmed and deemed final.

2. Respondent's suspension from the practice of dentistry shall commence on May 31, 1999, to provide time for respondent to wind down his practice. Respondent shall not take on any new patients or begin any new cases between the date of this Order and the commencement of the period of active suspension.

3. Respondent's motion for a stay is denied.

New Jersey Board of Dentistry

By: 
Abraham Samansky, D.D.S.
President